

TRUSTEE COMPANIES ACT.

Act No. 6, 1964.

Elizabeth II, An Act to consolidate and amend the law relating to
No. 6, 1964
the restrictions, liabilities, privileges and powers of
trustee companies; to repeal certain Acts relating
to such law; and for purposes connected therewith.
[Assented to, 19th March, 1964.]

BE

BE it enacted by the Queen's Most Excellent Majesty, by No. 6, 1964
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
follows :—

1. (1) This Act may be cited as the "Trustee Companies Act, 1964". Short title
and com-
mencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. (1) The several Acts mentioned in the First Schedule to this Act are hereby repealed. Repeal and
savings.

(2) (a) All rights, powers, capacities, authorities, duties, liabilities and obligations as executor, administrator, trustee, receiver, committee, manager or guardian, guarantee or surety, attorney or agent acquired or incurred by a trustee company under or in consequence of any of the Acts repealed by this Act shall, as from the commencement of this Act, continue in force and be exercisable by, binding upon and enforceable against the trustee company in the same manner and to the same extent as if they had been acquired or incurred by the trustee company under or in consequence of this Act.

(b) All authorisations, appointments and delegations given or made to and all demands made upon a trustee company under any of the Acts repealed by this Act shall, as from the commencement of this Act, have and take effect as if they had been given or made under this Act, and this Act shall apply to them accordingly.

(c) All suits, actions and proceedings pending, immediately before the commencement of this Act, by or against a trustee company which arose under or in consequence of any of the Acts repealed by this Act or which were in any way founded or dependent upon any of such Acts
may,

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No. 6, 1964 may, notwithstanding such repeal, be continued and completed and for the purpose shall, as from such commencement, be deemed to have arisen under or in consequence of or, as the case may be, to be founded or dependent upon the corresponding provision of this Act.

(d) Any person appointed under or by virtue of the provisions of any of the Acts repealed by this Act for any purpose specified in any such Act whose appointment was still effective immediately before the commencement of this Act, shall continue in such appointment as if this Act had been in force at the time he was so appointed and he had been appointed hereunder, and this Act shall apply to him accordingly.

(e) Where, immediately before the commencement of this Act, a trustee company was acting as executor under any grant of probate or as administrator under any grant of letters of administration, then, as from such commencement, such grant shall continue in force, and such trustee company shall continue in the office of executor or administrator, as the case may be, as if this Act had been in force at the time the grant was made and this Act shall apply accordingly.

(f) All debentures or inscribed stock which, immediately before the commencement of this Act, were held by the Treasurer in trust for a trustee company under any of the Acts repealed by this Act, and all moneys and investments, which, immediately before such commencement, were standing to the credit of the testamentary and trust fund in trust for any estate shall as from such commencement continue to be so held or to stand to the credit of such fund as if this Act had been in force at the time when the debentures or inscribed stock were vested in the Treasurer or, as the case may be, the unclaimed moneys were paid into the State Treasury to be placed to the credit of the testamentary and trust fund, and this Act shall apply accordingly.

(g) Notwithstanding the repeal of the Acts referred to in subsection one of this section, the provisions contained in such Acts relating to the entitlement of a trustee company to receive commission, salary or remuneration shall continue

continue to apply to and in respect of estates the administration of which were committed to a trustee company before the commencement of this Act. No. 6, 1964

(3) Except so far as expressly provided in this Act, a trustee company shall have the same rights, privileges and powers and be subject to the same restrictions, liabilities and penalties as it had and was subject to immediately before the commencement of this Act.

(4) Where in any document or in any other Act a reference is made to any of the Acts repealed by this Act or to any provision of any such Act that reference shall be construed as a reference to this Act, or to the corresponding provision, if any, of this Act.

(5) The generality of this section shall not be affected by any saving in any other provision of this Act, nor shall this section limit any saving in the Interpretation Act of 1897, as amended by subsequent Acts.

3. (1) In this Act, unless the contrary intention appears— Interpreta-
tion.

“Court” means Supreme Court.

“Judge” means a Judge of the Supreme Court.

“Manager” includes general manager and acting manager.

“Trustee company” means any company mentioned in the First Part of the Third Schedule to this Act.

(2) The powers conferred on trustee companies by this Act shall be in addition to and not in derogation of any powers conferred on trustee companies or on executors administrators or trustees by any other Act.

4. Where a trustee company is named either alone or jointly with any other person as executor in the last will or in any codicil thereto of any testator (whether the will or codicil was made before or after the commencement of this Act) that trustee company may act as executor and may apply for and obtain probate of such will and any codicil thereto and may perform and discharge all the acts and duties of an executor as fully and effectively as any other executor. Trustee
company
may act as
executor
and obtain
probate.

5.

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- No. 6, 1964**
- Person named as executor may authorise trustee company to take out administration c.t.a.**
- 5.** Any person named expressly or by implication as executor who would be entitled to obtain probate of the will of any testator without leave being reserved to any other person to apply for probate may, instead of himself applying for probate, authorise a trustee company to apply for administration with the said will annexed and a grant of such administration may be made to the trustee company upon its own application when so authorised unless the testator by his will directed or intimated that the office of executor should not be delegated or that a trustee company should not act in the trusts of his will.
- Trustee company may obtain letters of administration c.t.a.**
- 6.** In any case in which a private individual may apply for and obtain letters of administration with the will annexed of the estate of a deceased person, that individual may, instead of himself applying, authorise a trustee company to apply to the court for, and to obtain, letters of administration with the will annexed, which may be granted to that trustee company upon its own application when so authorised.
- Trustee company may be authorised to apply for letters of administration.**
- 7.** Any person entitled to obtain letters of administration of the estate of any intestate person may authorise a trustee company to apply for letters of administration of the estate either alone or jointly with any other person so entitled to apply and administration of such intestate estate may upon its own application be granted to the trustee company either alone or jointly as aforesaid.
- Trustee company may act as administrator notwithstanding its incorporation.**
- 8.** Where administration of any estate with or without the will annexed is granted to a trustee company either alone or jointly with any other person that trustee company may do and perform all acts and duties which belong to the office of administrator or administrator with the will annexed, as the case may be, notwithstanding its incorporation.
- Court to act on affidavit of managing director, etc.**
- 9.** In all cases in which a trustee company is empowered by this or any other Act to apply for probate of any will or letters of administration in respect of the estate of any deceased person the court may receive and act upon an affidavit

affidavit by the managing director, manager, assistant manager or the secretary, or by such other officer of the trustee company as may from time to time be appointed by the board of directors of the trustee company for that purpose in place of any affidavit required by any Act or rule of court to be made by the person making application for probate or for letters of administration.

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10. (1) All the capital both paid and unpaid, and all other assets of any trustee company (including the sum mentioned in subsection two of this section) shall be liable for the proper administration of all estates of which the trustee company shall act as executor or administrator, and no bond for the due administration of any estate shall be required to be given by or on behalf of the trustee company except in respect of estates exceeding twenty-five thousand pounds in value as to which the court or a judge may otherwise order.

Assets of trustee company liable for proper administration of estates: no bond required in certain courts.

(2) (a) The sum of twenty-five thousand pounds of the paid up capital of each trustee company shall be invested in the purchase of debentures or inscribed stock in such of the public funds of the Commonwealth of Australia as the board of directors of the trustee company may select, in the name of the Treasurer of the State of New South Wales in trust for the trustee company but transferable only with the joint consent of the said Treasurer and the trustee company under its common seal or upon the order of the court or a judge.

(b) Where the amount invested by a trustee company in compliance with the provision contained in such of the Acts repealed by this Act as related to that trustee company which corresponded to paragraph (a) of this subsection, was less than twenty-five thousand pounds the trustee company shall, as soon as practicable after the commencement of this Act, increase the investment to comply with paragraph (a) of this subsection.

(3) All interest and income to accrue from time to time from or in respect of the debentures or inscribed stock held by the Treasurer in trust for any trustee company shall be paid by the Treasurer to that trustee company as and when the same shall respectively become payable.

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 Company
 may be
 appointed
 trustee,
 receiver,
 committee,
 manager or
 guardian.

11. (1) Where any court, judge or other person has power to appoint any person as—

- (a) trustee;
- (b) receiver;
- (c) committee of the estate of a mentally ill person or manager of the estate of an incapable person within the meaning of the Mental Health Act, 1958, as amended by subsequent Acts; or
- (d) guardian of the estate of an infant,

a trustee company may be so appointed.

(2) Subject to this section a trustee company may be appointed or may continue to act as sole trustee in all cases notwithstanding that it is provided by the terms of the instrument (if any) creating the trust or of any power or otherwise that there shall be more than one trustee to perform the trust.

(3) Where a trustee company and one or more individuals are co-trustees, any one or more of such individuals may retire, and the trustee company shall for the purposes of any Act now or hereafter in force relating to the retirement of trustees and the vesting of trust property be deemed to be equivalent to two trustees.

(4) A trustee company shall not be appointed in any case in which the instrument creating the trust or power forbids the appointment of a trustee company.

(5) A trustee company shall not be appointed or be entitled to act as sole trustee in any case in which the instrument creating the trust or power expressly provides that there shall be another trustee in addition to a trustee company or that a trustee company shall not be appointed or act as sole trustee.

(6) In every case in which a trustee company is appointed or acts in any of the offices mentioned in subsection one of this section all the capital of the trustee company, both paid and unpaid, and all other assets of the trustee company and the directors, manager and assistant manager thereof and their respective estates shall be individually and collectively responsible for the proper discharge during the
 respective

respective tenures of their offices as directors, manager and assistant manager respectively, of their duties of the office in which the trustee company was appointed or acted. No. 6, 1964

(7) No bond recognizance or other security for the proper discharge of such duties shall be required to be given by or on behalf of the trustee company.

12. Where any property is vested in a trustee company and an individual or in a trustee company and another body corporate to the intent that they should hold the same jointly in any fiduciary capacity or as mortgagees they shall be deemed to be joint tenants thereof and not tenants in common unless otherwise expressly provided. Property vested in trustee company and another as trustees to be held jointly.

13. It shall be lawful for a trustee company to act, either alone or jointly with any other person under any power of attorney by which such trustee company is appointed attorney by any person or by any company or corporation and all the powers conferred upon such trustee company by such power of attorney may be exercised and carried into execution by the managing director, manager, assistant manager or secretary or by such other officer of the trustee company as may from time to time be appointed by the board of directors for the purpose or by any two directors of the trustee company; but in all cases the capital, both paid and unpaid, and all other assets of the trustee company, shall be liable for the due execution of the powers so conferred on the trustee company: Provided that nothing in this section shall be deemed to authorise any person, company or corporation to confer any power upon the trustee company which cannot by law be delegated or performed by an attorney. Trustee company may act under power of attorney by managing director, etc.

14. It shall be lawful for any executor, administrator or trustee to delegate by deed to a trustee company either alone or jointly with any other corporation or person, as his attorney, all such trusts and powers as may by law be delegated, and all acts done by the trustee company within the scope of such delegation shall, in favour of any persons dealing with the trustee company without notice of the death of, Power to delegate trusts to trustee company.

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No. 6, 1964 of, or revocation of authority by, such executor, administrator or trustee, be valid and effectual notwithstanding such death or revocation.

Power to
appoint
trustee
company to
discharge
duties of
executor,
etc.

15. It shall be lawful for the court or a judge, on the application of any executor or administrator acting under any probate or letters of administration granted either before or after the commencement of this Act, to appoint a trustee company, either alone or jointly with any other corporation or person, to be administrator in his place or stead, and thereupon the company shall have the same powers and authorities as if it had been the original executor or administrator as the case may be; and in every such case the capital, both paid and unpaid, and all other assets of the trustee company, and the directors, manager and assistant manager thereof and their respective estates shall be individually and collectively liable for the due administration during the respective tenure of their respective offices of the estates of which the trustee company is so appointed administrator.

Common
trust
funds.

16. (1) A trustee company may establish and keep in its books one or more funds to be known as common trust funds and, if more than one, with an appropriate distinguishing number.

(2) Before establishing a common trust fund the trustee company shall determine the class or classes of investment in which moneys to the credit of that common trust fund may be invested.

(3) Subject to this Act, balances to the credit of any current account in the books of the trustee company at the commencement of this Act or at any time thereafter kept by it as executor or administrator or as holder of any of the offices mentioned in section eleven of this Act may be carried to the appropriate common trust fund: Provided that:

(a) Nothing in this section shall authorise the carrying to the credit of any common trust fund of any moneys the investment of which in a common trust fund is expressly forbidden by the instrument creating the trust or by the conditions subject to which such moneys are held by the trustee company.

(b)

- (b) The balance to the credit of any particular account shall not be carried to a common trust fund unless by the determination relating to that common trust fund investment is limited to such class or classes of investment as would be lawful investments for such balance if separately invested. **No. 6, 1964**

(4) Investments made from moneys forming part of a common trust fund shall not be made in the name or on account of, nor shall they belong to, any particular estate, trust, property or person, but the trustee company shall keep an account in its books showing at all times the current amount for the time being at credit in the common trust fund on account of each estate, trust, property or person.

(5) Any profits or losses upon realisation of any investment in a common trust fund shall be credited or debited (as the case may require) to the common trust fund and be received or borne proportionately by the several amounts constituting the common trust fund at the time of such realisation.

(6) A trustee company may sell investments belonging to a common trust fund and may withdraw any of the moneys belonging to a common trust fund for any purpose of or relating to the exercise and discharge of its powers, authorities, duties and functions.

(7) A trustee company may, in its discretion, at any time withdraw from a common trust fund any amount at credit in the common trust fund on account of any estate, trust, property or person, and invest such amount on the separate account of such estate, trust, property or person.

(8) Amounts so withdrawn from a common trust fund shall, as from the date of such withdrawal, cease to have any claim for interest or otherwise from the common trust fund.

(9)

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(9) If for the purpose of providing for any withdrawal any investment is realised, then, for the purposes of this section, that part of the moneys arising from such realisation which is equal to the amount of interest accrued on such investment shall be deemed to be income of the common trust fund and the balance shall be deemed to be capital.

(10) As on the first day of every month the trustee company shall determine the value of the investments in each common trust fund as on that day.

(11) Investments in and withdrawals from a common trust fund shall during any month be effected on the basis of the valuation aforesaid made as on the first day of such month.

(12) At intervals of not more than six months the trustee company shall pay or allocate the income arising from a common trust fund proportionately to or among the estates, trusts, properties and persons entitled to the income arising from the capital sums invested in the common trust fund according to the several sums so invested and the periods for which they remain so invested.

(13) Where a trustee company is appointed and acts jointly with any other person as executor or administrator or as holder of any of the offices mentioned in section eleven of this Act the following provisions shall have effect :—

- (a) the trustee company may, with the consent in writing of such other person, exercise and discharge in relation to any of the property jointly held or controlled all or any of the powers, authorities, duties and functions conferred or imposed by this section which the trustee company, if acting alone would have had or might have exercised or discharged ;
- (b) all moneys under the control of the trustee company and such other person jointly may with the consent in writing of such other person be dealt with by the trustee company alone in the same manner as moneys under the control of the trustee company alone ;
- (c)

- (c) the person acting jointly with the trustee company shall be exonerated from any liability which, but for this paragraph, might have arisen in consequence of the exercise of the powers conferred by this subsection. No. 6, 1964

17. Where a trustee company holds moneys belonging to more than one estate upon trusts, which require or permit the investment thereof, it shall be lawful for the trustee company to invest such moneys as one fund, and to distribute the income arising therefrom rateably among the several estates to which the money so invested belongs; and any loss arising from any such investment shall likewise be borne rateably by the several estates. Contributory investments.

Any such investment shall be made either in investments for the time being authorised by the Trustee Act, 1925, as amended by subsequent Acts, for the investment of trust funds or in investments authorised by each of the trust instruments.

18. (1) In respect of every estate which is, after the commencement of this Act, committed to the administration or management of a trustee company as executor, administrator, trustee or receiver or as committee or manager of the estate under the Mental Health Act, 1958, as amended by subsequent Acts, or as guardian of the estate of an infant or in any other capacity, the trustee company shall be entitled to receive out of the estate, in addition to all moneys properly expended by the trustee company and chargeable against the estate, a commission to be fixed from time to time by the directors of the trustee company but not in any case exceeding :— Commission chargeable by trustee company.

- (a) Where the estate is committed to the administration and management of the trustee company as attorney acting under power of attorney—five pounds for every one hundred pounds of all moneys, whether capital or income, received by the trustee company as such attorney; or

(b)

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(b) Where the estate is committed to the administration or management of the trustee company in any of the other capacities mentioned in the foregoing provisions of this subsection—

- (i) four pounds for every one hundred pounds of the corpus or capital value of the estate; and
- (ii) five pounds for every one hundred pounds of the income received by the trustee company on account of the estate.

(2) Such commission shall be payable out of the moneys in possession of the trustee company representing the estate upon which the same shall be chargeable, and shall be accepted by the trustee company in full satisfaction of any claim to remuneration for acting as such executor, administrator, trustee, receiver, committee, manager, guardian or in any other capacity, and no other charges beyond such commission, fee and moneys so expended by the trustee company shall be made or allowed.

(3) Where any judge sitting in the equitable or probate jurisdiction of the Court is of opinion that the rate of commission charged in respect of any estate is excessive, such judge may of his own motion or on the application of any person interested in the estate, review the rate of commission and may, on such review, reduce the rate of commission.

(4) The commission charged by a trustee company against any estate shall not exceed the amount of the published scale of charges of such trustee company at the time when the administration or management of such estate was committed to such trustee company.

(5) Nothing in this section shall prevent the payment of any commission which a testator has in his will directed to be paid either in addition to or in lieu of the commission provided for by this section.

(6)

(6) The expression "corpus or capital value" in subparagraph (i) of paragraph (b) of subsection one of this section means the gross corpus or capital value of the estate in question without deduction of debts or liabilities secured or unsecured. No. 6, 1964
cf. Trustee
Companies
Act, 1952,
s. 2.

(7) The commission, which a trustee company is entitled to receive under this section, shall not in any way be affected or diminished by the fact that any other person may, or may not be entitled to, or be allowed, commission in respect of the same estate. cf. *Ibid.*

19. (1) Where the administration or management of any estate committed to a trustee company in any of the capacities mentioned in subsection one of section eleven of this Act involves the carrying on of a business which belongs wholly to the estate, or in which the estate has an interest as partner, and the carrying on of such business involves the trustee company in duties and obligations more onerous than the normal duties and obligations of a trustee, receiver, committee, manager or guardian, the court or a judge may, on the application of the trustee company, allow an additional fee per annum at a rate not exceeding one half of one per centum on the book value of the assets employed, in the business or, as the case may be, on the book value of so much of those assets as is owned by the estate. Additional
fee for
carrying
on business.

(2) Where any judge sitting in the equitable jurisdiction of the Court is of opinion that by reason of change of circumstances or otherwise the rate of the additional fee is excessive he may of his own motion or on the application of any person interested in the estate, review the rate of such additional fee.

20. A trustee company which has been appointed executor, administrator, trustee, receiver, committee, manager, guardian or attorney, whether before or after the commencement of this Act, shall be subject in all respects to the same control Removal
from
office.

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No. 6, 1964 — control and to removal or restraint from acting and generally to the jurisdiction of the courts, in the same manner as any other executor, administrator, trustee, receiver, committee, manager, guardian or attorney.

Court may
order
account.

21. (1) Any trustee, cestui que trust, executor, legatee, administrator, wife, husband, next of kin, creditor or infant entitled to or interested in any estate which is for the time being under the management or control of a trustee company, who is, upon application to the managing director or manager of the trustee company, unable to obtain a sufficient account of the property and assets of which such estate consists and of the disposal and expenditure thereof or thereout, may apply to the court or a judge for an account.

(2) If the court or judge is of opinion that a sufficient account has not been rendered by the trustee company, the court or judge shall order such account to be rendered by the trustee company as to the court or judge shall seem just.

(3) If the court or judge is of opinion that no sufficient case has been established to require the trustee company to furnish an account or that a sufficient account had been furnished, the court or judge may dismiss the application.

(4) The court or judge may make such order as to costs either against the trustee company or against the applicant or as to payment of costs out of the estate as it or he thinks fit.

Court may
order
audit.

22. (1) The court or a judge may, on any application under section twenty-one of this Act, in addition to or in substitution for any account to be rendered by the trustee company under subsection two of that section order that a person to be named in such order shall examine the books and accounts of the trustee company relating to the estate in respect of which the order is made.

(2)

(2) Upon the making of any such order the trustee company shall deliver to the person named in such order a list of all the books kept by it and shall produce to such person at the office of the trustee company at all reasonable times when required all books, accounts, vouchers, papers and other documents of the trustee company relating to the estate, and shall afford him all necessary information and all other necessary facilities for enabling him to make the said examination.

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(3) The court or judge shall have the same power as to the costs of such examination as is given by section twenty-one of this Act in respect of costs of or occasioned by an application under that section.

23. Sections twenty-one and twenty-two of this Act apply to all estates for the time being under the administration of a trustee company whether the administration was committed to the trustee company before or after the commencement of this Act.

Application
of ss. 21
and 22.

24. (1) So long as any estate in respect of which a trustee company is executor, administrator, trustee, receiver, committee, manager or guardian, remains in whole or in part unadministered it shall not be lawful to proceed to wind up the trustee company voluntarily unless with the sanction of the court or a judge.

Court may
restrain
sale of
shares or
voluntary
winding-up.

(2) Any person interested in an estate or who has any claim in respect of any such estate may apply to the court or a judge—

- (a) to restrain any director or shareholder from disposing of any shares such director or shareholder may hold in the trustee company;
- (b) to restrain the voluntary winding-up of the trustee company.

25.

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No. 6, 1964 **25.** If it is proved that three-fourths or more of the amount of capital authorised by this Act to be called up by a trustee company has been lost by that trustee company, the court may upon the application of any member or creditor of the trustee company or cestui que trust make an order for the winding-up of the trustee company.

Unclaimed moneys. **26.** (1) All moneys which form part of any estate of which a trustee company is executor, administrator or trustee and which remain unclaimed by the person entitled to the same for a period of five years after the time when the same became payable to that person, except where payment is restrained by injunction of a court of competent jurisdiction, shall, together with interest accrued thereon, be paid by the trustee company to the Treasurer to be placed to the credit of the testamentary and trust fund, distinguishing the particular estates in respect of which such moneys are paid.

(2) All moneys which were paid into the Treasury and placed to the credit of the testamentary and trust fund in accordance with directions contained in any of the Acts repealed by this Act and which, or the residue of which, immediately before the commencement of this Act, stood to the credit of the account in that fund of any particular estate shall, as from such commencement, be held by the Treasurer as if this Act had been in force at the time such moneys were so paid in, and this Act shall apply accordingly.

(3) All moneys for the time being in the testamentary and trust fund shall constitute one common fund and shall be available for investment as provided in this section.

(4) The Treasurer may from time to time invest the moneys to the credit of the testamentary and trust fund in—

- (a) any Government debentures, stock or securities of the Commonwealth of Australia; or
- (b) any debentures stock or securities guaranteed by the State of New South Wales.

(5)

(5) Interest received from investments from the common fund shall be credited to an account to be called the "interest account" within the testamentary and trust fund. Moneys for the time being in the interest account shall be kept separately from the common fund but may be invested in any of the investments authorised by subsection four of this section. No. 6, 1964

(6) The Treasurer shall determine from time to time the amount of interest which shall be allowed on the balances at credit of the account of any estate in the testamentary and trust fund and any such determination shall have regard to the interest earned by the testamentary and trust fund, and to the period during which such balances were included in that fund.

(7) (a) All debentures, stock and securities constituting investments by the Treasurer under subsection four of this section shall be purchased by him as such without any name, addition or description and in all transfers of the said debentures, stock and securities by the Treasurer he shall be so styled without any name, addition or description. The Treasurer shall not sign any such transfers or pay over any of the moneys standing to the credit of the said fund unless an order of the court directing such transfer and specifying the amount which the claimant is entitled to be paid from the amount at credit of the particular estate, and the name, addition or description of the person to whom the proceeds of such sale are to be paid shall be left at the office of the Treasurer, nor until the purchase money of the debentures, stock or securities to be sold has been received by the Treasurer.

(b) The Treasurer may realise any investment made under the authority of this section for the purposes of complying with any such order.

(8) Each trustee company shall at intervals of six months deliver to the Treasurer a statement of all unclaimed moneys as defined in subsection one of this section which during the preceding six months have been in its hands, setting out—

(a) the estates in respect of which the same have been received; and

(b)

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(b) the dates and amounts of the payments of the same to the Treasurer under this section.

(9) If the unclaimed moneys referred to in subsection eight of this section or any part thereof have not been paid to the Treasurer with a statement of the reason for the delay of such payments, or if default is made by the trustee company in compliance with the provisions of this section, the trustee company shall be liable to a penalty not exceeding five pounds for every day while such default continues, and every director, manager or assistant manager of the trustee company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

(10) The period of five years referred to in subsection one of this section and the period of six months referred to in subsection eight of this section respectively include a period before or after or partly before and partly after the commencement of this Act.

Applica-
tions by
persons
entitled to
trust funds.

27. (1) Any person entitled to any moneys or investments which form part of the testamentary and trust fund may apply to the court for an order under section twenty-six of this Act directing payment or transfer of the same to him.

(2) If the Treasurer appears upon such application he shall be entitled to such costs against the applicant or out of the testamentary and trust fund as the court may direct.

Treasurer
may apply
for account.

28. (1) The Treasurer may, after demand in writing made to the managing director, manager or assistant manager of a trustee company for a sufficient account of the property and assets of which any estate included in or which ought to be or to have been included in the statement of unclaimed moneys consists and of the disposal and expenditure thereof, apply to the court for an account.

(2) If the court is of opinion that no sufficient account has been rendered by the trustee company, the court shall order such account to be rendered by the trustee company as to the court seems fit, or if the court is of opinion
that

that in the circumstances the trustee company was not bound to furnish any account, or that any account furnished by the trustee company was sufficient, the court may dismiss the application. No. 6, 1964

(3) The court may make such order as to costs either against the trustee company or as to payment of costs out of the estate as the court thinks fit.

29. (1) The managing director, manager or assistant manager of each trustee company shall during the months shown in the second column of the table contained in the First Part of the Third Schedule to this Act opposite the name of such trustee company in every year during which such trustee company carries on business, make a statutory declaration in or to the effect of the form contained in the Second Part of the said Schedule, in relation to such trustee company and of the liabilities of such trustee company and its investments of and in all estates and property held by such trustee company in trust or otherwise, up to the respective dates then last past shown opposite such months in the third column of the said table. Returns.

(2) Such declaration shall within seven days after the making thereof be filed in the office of the Registrar of Companies and a copy of such declaration shall be displayed in a conspicuous place in the registered office of the trustee company in New South Wales and in every branch office or place where the business of the trustee company is carried on in New South Wales, and shall be given to any member or creditor of the trustee company or any cestui que trust on application.

(3) If default is made in compliance with the provisions of this section the trustee company and every managing director, manager or assistant manager of the trustee company who knowingly and wilfully authorises or permits such default shall be liable to a penalty not exceeding five pounds for every day whilst such default continues.

30. (1) Every application under this Act to the court or judge may be made by motion. Applica-
tions to
court or
judge.

(2)

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(2) Subject as hereinafter provided notice of the application and of the date on which it is intended to be made shall be advertised once—

- (a) in a daily newspaper circulating in Sydney, and published at least seven days before such date; and
- (b) where the application is made by the executors or administrators of any person who died at any place in New South Wales situated more than thirty miles from Sydney, also in a newspaper circulating in the district in which the deceased resided at the date of his death, and published within the time aforesaid.

(3) It shall not be necessary to advertise in any newspaper notice of any application for the appointment of a trustee company as trustee where all persons beneficially interested are before the court or have had notice of the intended application.

(4) The court or judge may in any case require notice to be served on any person residing in New South Wales entitled to the immediate receipt of the whole or part of the income or corpus of the estate in respect of which the application is made.

(5) The court or judge may order the costs and expenses of and incidental to any such application to be paid or raised out of the estate in respect of which the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court or judge seems just.

Managing
director and
others may
represent
trustee
company
and be
personally
responsible.

31. (1) In all cases in which the personal attendance of an executor, administrator, trustee, receiver, committee, manager or guardian is required in any court or elsewhere, a trustee company shall be entitled to make such attendance in the person of the managing director, manager, assistant manager

manager or secretary or by such other officer of the trustee company as may from time to time be appointed by the board of directors for the purpose. No. 6, 1964

(2) All declarations, affidavits, statements of defence or other statements required by law to be made on oath may be made and sworn on behalf of a trustee company by the managing director, manager, assistant manager or secretary or by such other officer of the trustee company as may from time to time be appointed by the board of directors for the purpose.

(3) In every case where a trustee company obtains a grant of probate or letters of administration or acts as trustee, receiver, committee, manager or guardian, the directors, managing director, manager and assistant manager of the trustee company in their proper persons and estates shall be individually and collectively responsible for the due administration during the respective tenures of their respective offices of the estates entrusted to the trustee company and shall in their own proper persons be liable by process of attachment, commitment for contempt or by other process to all courts having jurisdiction in that behalf in the event of disobedience to the rules, orders and decrees of such courts made against the trustee company in the same manner and to the same extent as if such managing director, manager, assistant manager and director had personally obtained the grant of probate or letters of administration and had acted as executor, administrator, trustee, receiver, committee, manager or guardian and as if the rule, order or decree had been made against them personally instead of against the trustee company.

(4) Notwithstanding the personal liability of the managing director, manager, assistant manager and directors the capital both paid and unpaid and all other assets of the trustee company shall remain liable for any pecuniary loss which may be occasioned by or which may happen through any breach of trust or duty committed, or any neglect in the performance of any trust or duty by the trustee company or any of its officers, whether such trust or duty is implied by the law or expressly conferred or imposed by the instrument under which the trustee company acts.

(5)

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(5) At least three directors of every trustee company shall be bona fide residents of New South Wales. Of such directors one shall, in the case of a trustee company which has a managing director, be the managing director: Provided that, it shall be a sufficient compliance with this subsection,—

- (a) in the case of the Union-Fidelity Trustee Company of Australia Limited or The Trustees, Executors, and Agency Company, Limited if each of the directors is a bona fide resident of either New South Wales or Victoria; and
- (b) in the case of Elder's Trustee and Executor Company, Limited, or Executor Trustee and Agency Company of South Australia, Limited if each of the directors is a bona fide resident of either New South Wales or South Australia.

Recovery of penalties.

32. Any penalty imposed by this Act may be recovered in a summary way before a court of petty sessions.

Settlors or testators may appoint own solicitors.

33. (1) Where by any settlement, will, codicil or other testamentary writing made before or after the commencement of this Act, a settlor or testator directs that any practising solicitor shall conduct the legal business of his estate, such solicitor shall be entitled to act therein accordingly, but in such case a trustee company shall not be liable for the negligence, misfeasance, nonfeasance or misconduct of such solicitor.

(2) Such solicitor may be removed by the court upon the application of the trustee company or of any person interested in the said estate upon cause shown, and the court may appoint a solicitor nominated by the trustee company in his place.

Other companies may apply for similar powers.

34. Nothing in this Act shall entitle a trustee company to oppose the granting of powers similar to those conferred upon trustee companies by this Act to any other company or to corporations generally, or to claim or to seek compensation in consequence of such powers being conferred upon any other company or upon corporations generally, or in the event of the repeal of this Act.

35.

35. The following provisions with respect to the liability of directors of a trustee company shall be and remain in force notwithstanding any alteration which may be made in the articles of association of that trustee company.

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Liability of
directors.

In the event of a trustee company being wound up, every person who has been a director of such trustee company at any time within the period of two years preceding the commencement of the winding-up shall be liable for the balance unpaid on every share which he may have transferred during such two years, in addition to his liability upon any such shares held by him at the commencement of the winding-up, in the event of the holder of such shares being unable to pay the said balance per share in full.

36. (1) The provisions set out in the Second Schedule to this Act under the short headings comprising the names of the trustee companies shall be and remain in force with respect to the respective trustee companies named in such short headings notwithstanding the repeal of the Acts mentioned in the First Schedule to this Act, and notwithstanding any alteration which may be made in the articles of association of the trustee company so named.

Provisions
continued in
force.

(2) The provisions set out in the Second Schedule to this Act under the short heading "Perpetual Trustees Australia Limited" shall have effect notwithstanding anything contained in section fifty-six of the Companies Act, 1961, or any special resolution passed by the Company or anything contained in the articles of association of the Company.

(3) For the purposes of any provision set out in the said Second Schedule which limits the number of shares which may be held by any member the word "member" shall, in its application to a company, be deemed to include any other company to which the first mentioned company is related within the meaning of section six of the Companies Act, 1961.

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SCHEDULES.

Sec. 2.

FIRST SCHEDULE.

SHORT TITLE OF ACT.

Permanent Trustee Company of New South Wales (Limited) Act.

Perpetual Trustee Company (Limited) Act.

The Union Trustee Company of Australia, Limited, Act.

Permanent Trustee Company of New South Wales Limited
(Amendment) Act, 1918.

Perpetual Trustee Company (Limited) Amendment Act, 1918.

The Union Trustee Company of Australia, Limited (Amendment)
Act of 1919.

Elder's Trustee and Executor Company, Limited, Act, 1920.

Executor Trustee and Agency Company of South Australia,
Limited, Act, 1925.

The Trustees, Executors, and Agency Company, Limited, Act, 1927.

Burns Philp Trust Company Limited Act.

Trustee Companies Act, 1952.

Sec. 36.

SECOND SCHEDULE.

PERMANENT TRUSTEE COMPANY OF NEW SOUTH WALES (LIMITED).

(a) No member shall hold more than two thousand shares nor less than fifty shares in his own right: Provided that if the capital of the company is increased by the issue of new shares, the number of shares which may be held by each member shall be proportionately increased.

(b) Shareholders in the company shall be persons residing in the State of New South Wales, and possessing property therein to such amount as the Board of Directors of the company shall consider a reasonable qualification.

(c)

(c) No more than one pound five shillings per share shall be called up except in the event of and for the purpose of the winding-up of the company, and every member shall in such event be liable to contribute the unpaid balance of every share held by him. No. 6, 1964

(d) The capital of the company shall be and remain divided into shares of five pounds each, and the number of shares in the company shall not be at any time reduced to less than one hundred thousand.

PERPETUAL TRUSTEE COMPANY (LIMITED).

(a) No member other than Perpetual Trustees Australia Limited shall hold more than two thousand shares in his own right: Provided that if the capital of the company is increased by the issue of new shares the number of shares which may be held by each member shall be proportionately increased.

(b) No more than five pounds per share shall be called up except in the event of and for the purpose of the winding-up of the company, and every member shall in such event be liable to contribute the unpaid balance of every share held by him.

(c) The capital of the company shall be and remain divided into shares of ten pounds each, and the number of shares in the company shall not be at any time reduced to less than fifty thousand.

THE UNION-FIDELITY TRUSTEE COMPANY OF AUSTRALIA LIMITED.

(a) No member shall hold more than one thousand shares in his own right: Provided that if the capital of the company is increased by the issue of new shares the number of shares which may be held by each member shall be proportionately increased.

(b) No more than one pound ten shillings per share shall be called up, except in the event of and for the purpose of the winding-up of the company, and every member shall in such event be liable to contribute the unpaid balance of every share held by him.

(c) The capital of the company shall be and remain divided into shares of two pounds ten shillings each, and the number of shares in the company shall not be at any time reduced to less than one hundred thousand.

BURNS PHILP TRUST COMPANY LIMITED.

(a) Not more than two shillings shall be called up or received by the company on one hundred and fifty thousand of the subscribed shares of one pound each in the capital of the company except in the event of and for the purpose of the winding-up of the company and every member shall in such event be liable to contribute the unpaid balance of every share held by him. And it shall not be lawful for the company to mortgage, charge or in any way encumber the uncalled capital on the aforesaid one hundred and fifty thousand shares.

(b)

Trustee Companies Act.

No. 6, 1964 (b) Partly paid up shares in the company shall not be transferable unless in any case the proposed transferee is in the opinion of the directors possessed of such an amount of property as they consider reasonable.

(c) It shall not be lawful for any shareholder in the company other than Burns Philp and Company Limited to be the owner of more than two thousand shares in the company in his own right.

(d) The capital of the company shall be and remain divided into shares of one pound each and the number of shares in the company shall not be at any time reduced to less than one hundred thousand.

(e) No more than four-fifths of the profits made by the company in any one year shall be distributed as dividends or otherwise until there has been accumulated out of profits a fund of sixty-five thousand pounds. Such fund shall constitute a special reserve and shall not be in any manner distributed amongst the shareholders except in the event of the winding-up of the company.

WINCHCOMBE CARSON TRUSTEE COMPANY LIMITED.

(a) Not more than two shillings shall be called up or received by the company on one hundred and fifty thousand of the subscribed shares of one pound each in the capital of the company except in the event of and for the purpose of the winding-up of the company and every member shall in such event be liable to contribute the unpaid balance of every share held by him. And it shall not be lawful for the company to mortgage, charge or in any way encumber the uncalled capital on the aforesaid one hundred and fifty thousand shares.

(b) Partly paid up shares in the company shall not be transferable unless in any case the proposed transferee is in the opinion of the directors possessed of such an amount of property as they consider reasonable.

(c) It shall not be lawful for any shareholder in the company other than Winchcombe Carson Limited to be the owner of more than two thousand shares in the company in his own right.

(d) The capital of the company shall be and remain divided into shares of one pound each and the number of shares in the company shall not be at any time reduced to less than one hundred thousand.

(e) No more than four-fifths of the profits made by the company in any one year shall be distributed as dividends or otherwise until there has been accumulated out of profits a fund of sixty-five thousand pounds. Such fund shall constitute a special reserve and shall not be in any manner distributed amongst the shareholders except in the event of the winding-up of the company.

PERPETUAL

PERPETUAL TRUSTEES AUSTRALIA LIMITED.

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(a) No member shall hold more than 1½ per cent. of the issued capital in his own right.

(b) No more than one pound per share shall be called up except in the event of and for the purpose of the winding-up of the Company, or in the event of and for the purposes of meeting any calls made in the winding-up of the Perpetual Trustee Company (Limited), and every member shall in such event be liable to contribute the unpaid balance of every share held by him or so much thereof as may be necessary to meet the call.

(c) The capital of the Company shall remain divided into shares of two pounds each and the number of shares shall not be at any time reduced to less than five hundred thousand.

THIRD SCHEDULE.

Sec. 29.

FIRST PART.

Trustee Company.	Second column.	Third column.
Permanent Trustee Company of New South Wales (Limited).	January. July.	31st December. 30th June.
Perpetual Trustee Company (Limited)	January. July.	31st December. 30th June.
The Union-Fidelity Trustee Company of Australia Limited.	March. September.	28th February. 31st August.
Elder's Trustee and Executor Company, Limited.	April. October.	31st March. 30th September.
Executor Trustee and Agency Company of South Australia, Limited.	April. October.	31st December. 30th June.
The Trustees, Executors, and Agency Company, Limited.	January. July.	31st December. 30th June.
Burns Philp Trust Company Limited	June. December.	31st May. 30th November.
Winchcombe Carson Trustee Company Limited.	June. December.	31st May. 30th November.
Perpetual Trustees Australia Limited	January. July.	31st December. 30th June.

SECOND

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SECOND PART.

..... LIMITED.

I,
of

..... LIMITED do solemnly and sincerely declare:—

1. THAT the liability of the members is limited.

2. THAT the capital of the company is pounds divided into shares of pound(s) each.

3. THAT the number of shares is

4. THAT calls to the amount of per share have been made under which the sum of has been received.

5. THAT the assets of the company other than assets held on trust on the day of, 19 .., were:—

Government securities	£
Bills of exchange and promissory notes ..	£
Cash at the banks	£
Other securities	£
Other assets	£
Total	£

6. THAT the liabilities of the company on the day of, 19 .., were

7. THAT the investments and moneys held by the company upon trust on the day of, 19 .., were as follows:—

Advanced on mortgage of real estate ..	£
Debentures and inscribed stock	£
Landed property	£
Station properties and livestock	£
Shares in banks and public companies ..	£
Fixed deposits and other securities	£
Cash at banks at credit of trust and current accounts	£
Total	£

AND

Crown Lands (Amendment) Act. 97

AND I MAKE this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act, 1900, as amended by subsequent Acts. **No. 6, 1964**

Declared before me at Sydney }
this day of }
..... 19 . }
